

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
DONALD M. AND LESLIE G. BURROWS)

Appearances:

For Appellants: Donald M. Burrows,
in pro. per.

For Respondent: James C. Stewart
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Donald M. and Leslie G. Burrows against a proposed assessment of additional personal income tax in the amount of \$947.91 for the year 1978.

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Leslie G. Burrows is a party to this appeal solely because she filed a joint return with her husband for the year in issue. Accordingly, only Donald M. Burrows will hereinafter be referred to as *appellant."

The issue presented by this appeal, is whether appellant is entitled to deduct as educational expenses certain payments for flight-training expenses for which he received nontaxable reimbursement from the Veterans' Administration.

During the year in issue, appellant, a veteran of the Armed Forces, was employed as an airline pilot with Continental Airlines. In 1978, he undertook and completed a flight-training course which entitled him to an Airline Transport Pilot rating in a Lear Jet. As a veteran, appellant was eligible for an educational assistance allowance from the Veterans' Administration equal to 90 percent of the costs incurred for the flight-training classes; the reimbursement payments were exempt from taxation. On his 1978 California personal income tax return, appellant claimed the entire \$10,818 cost for his flight training as an educational expense.

Upon audit, respondent determined that appellant's training had not been undertaken primarily for the purpose of maintaining or improving skills required in his employment and disallowed the claimed deduction in its entirety. Upon consideration of appellant's protest of its action, however, respondent reversed its earlier determination and accepted appellant's position that the expenditures for the aforementioned training constituted educational expenses under Revenue and Taxation Code section 17202. Respondent also determined, however, that only the portion in excess of the amount reimbursed by the Veterans' Administration was deductible under the provisions of section 17285 of the Revenue and Taxation Code.^{1/} Appellant protested respondent's action, thereby resulting in this appeal.

After careful review of the record on appeal, and for the specific reasons set forth below, we can only conclude that respondent's determination was correct. The law is clear in this regard; appellant's deduction of the reimbursed expenses is barred by section 17285, which provides, in part, as follows:

^{1/} Revenue and Taxation Code sections 17202 and 17285 are substantively identical to sections 162 and 265, respectively, of the Internal Revenue Code of 1954. Accordingly, federal case law is highly persuasive in interpreting the California statutes. (Rihn v. Franchise Tax Board, 131 Cal.App.2d 356, 360 [280 P.2d 893] (1955).)

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No deduction shall be allowed for--

(a) Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this part, or any amount otherwise allowable under Section 17252 (relating to expenses for production of income) which is allocable to interest (whether or not any amount of such interest is received or accrued) wholly exempt from the taxes imposed by this part.

Under this provision, an amount cannot be deducted if it is "allocable to" a class of tax-exempt income other than interest. According to respondent's former regulation 17285(a), subdivision (2)(A), repealed May 16, 1981, a class of exempt income includes any class of income wholly excluded from gross income under any provision of Part 10 of Division 2 of the Revenue and Taxation Code or under the provisions of any other law. Since the subject reimbursement received by appellant was exempt from taxation by virtue of 38 U.S.C. § 3101(a), it clearly qualifies as a class of exempt income for purposes of section 17285. Finally, since the educational costs are allocable to the reimbursement (John Manocchio, 78 T.C. 989 (1982)), we must conclude that the portion of the flight-training expenses reimbursed by the Veterans' Administration is allocable to a class of tax-exempt income and therefore is nondeductible.

In essence, appellant has argued that respondent is estopped from disallowing the reimbursed portion of the cost incurred for the flight-training classes as an educational expense. In support of this argument, appellant notes that Revenue Ruling 62-213, 1962-2 Cum. Bull. 59, provided for the deduction of such reimbursed expenses, as did Internal Revenue Service Publication 508, Education Expenses Prior to 1980. In pertinent part, the latter stated as follows: "Veterans. The deductible educational expenses of a veteran of the Armed Forces are not required to be reduced by tax-exempt benefits received from the Veterans Administration.*"

The estoppel argument advanced by appellant is identical to the one addressed and rejected by the tax court in John Manocchio, supra; there is no reason to reach a different conclusion in this appeal. Furthermore, we note that the fact that appellant may

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have relied on erroneous information/ contained in a federal publication is not sufficient to warrant estoppel (see Appeal of Marvin W. and Iva G. Simmons, Cal. St. Bd. of Equal., July 26, 1976), and that federal revenue rulings are merely the Intern.31 Revenue Service's interpretation of the law, and are not binding upon this board.. (Appeal of Verne D. and Joanne O. Freeman, Cal. St. Bd. of Equal., June 23, 1981.)

For the reasons set forth above, respondent's action in this matter will be sustained.

2/ Revenue Ruling 62-213 apparently formed the basis for the erroneous statement found in Internal Revenue Service Publication. 508. In Manocchio, the tax court held that Revenue Ruling 62-213 incorrectly interpreted the law with respect to the deductibility of flight-training expenses for which veterans are reimbursed, and noted that Revenue Ruling 80-173, 1980-2 Cum. Bull. 60, correctly pronounced that such reimbursed expenses are not deductible.

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0 R' D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Donald M. and Leslie G. Burrows against a proposed assessment of additional personal income tax in the amount of \$947.91 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of December ,
1982, by the State Board of Equalization, with Board Members
Mr. Bennett, Mr. **Collis**, Mr. Dronenburg and Mr. **Nevins** present.

William M. Bennett , Chairman

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

Member

Member